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No. 00-598

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

KATHRYN HELLWIG,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION

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The respondent respectfully request that this Honorable Court deny the Petition for Writ of Certiorari seeking review of the Superior Court of Pennsylvania's judgment dated November 17, 1999.

COUNTER-STATEMENT OF CASE

A. Procedural History

Petitioner was arrested on July 7, 1998 and charged with Unsworn Falsification of Authorities, 18 Pa. C.S.A. § 4904(a)(1), and False Reports to Law Enforcement Authorities, 18 Pa. C.S.A. § 4906(a). Pre-trial motions were litigated on January 8 and January 11, 1999. Following a trial by jury that began on January 11, 1999, petitioner was convicted of the aforementioned offenses on January 14, 1999. On that same date, petitioner was sentenced to a term of incarceration of not less than three (3) nor more than twenty-three (23) months. The Trial Court also ordered that petitioner receive a mental health examination and abide by any recommended treatment.

The Trial Court published its Opinion on March 2, 1999.

On November 17, 1999, the Pennsylvania Superior Court affirmed the judgment of sentence after a timely appeal by petitioner. The Superior Court in its Memorandum Opinion found the Opinion of Bucks County Common Pleas to be exhaustive and well-reasoned, and adopted the Opinion as its own in denying the claims that police illegally obtained statements or evidence from petitioner, the self-reported "victim" of violent crime. The Superior Court determined that the Trial Court had not erred in excluding any of the proposed defense testimony, as it could only serve to bring speculative and irrelevant issues into the case.

On January 21, 2000, a Court Order denying petitioner's request for rehearing was entered. On July 17, 2000, the Pennsylvania Supreme Court denied petitioner's Petition for Allowance of Appeal.

On October 2, 2000 the petitioner filed this Writ of Certiorari in the Supreme Court of the United States.

B. Factual History

On Sunday morning, April 19, 1998, shortly after 2:00 a.m., the Warminster Township Police were called to respond to assist a shooting victim at the parking lot of Yum Yum Donuts on York Road and County Line Road in Warminster Township, Bucks County, Pennsylvania. N.T. Vol. III, p. 85. When police arrived they found petitioner seated in the driver's seat of her car, a two-door Ford Bronco. She was suffering from a gunshot wound to her right thigh and being treated by an emergency medical technician. N.T. Vol. III, pp. 9-10, 86, 92. Petitioner was alert and calm. N.T. Vol. III, pp. 11, 22, 100. Present on scene was Sergeant Anthony Ginaldi of the Philadelphia Police Department. Sgt. Ginaldi was the live-in paramour of petitioner. Sgt. Ginaldi, armed and in uniform, had arrived in a marked Police unit from the Seventh District of Philadelphia prior to the arrival of the Warminster police. N.T. Vol. III, p. 86. Petitioner reported to the police immediately upon their arrival that she had been abducted and shot by a third party. Police immediately broadcast the information over police radio to Philadelphia, Bucks and Montgomery Counties and the surrounding area in an attempt to apprehend the individuals reportedly involved. The police also took steps to protect petitioner's father and daughter. N.T. Vol. III, pp. 13-20.

A handgun owned by petitioner was found on the passenger's seat of petitioner's vehicle. N.T. Vol. III, pp. 87-88. Ballistic evidence established that petitioner was shot with her own gun. N.T. Vol. III, pp. 152-53. The bullet was later removed from her right buttock at Abington Memorial Hospital. The bullet had entered her right thigh and, traveling front to back, lodged in her right buttock. N.T. pp. 119-20.

Both the Warminster and Philadelphia Police Departments began investigations to apprehend the reported shooter. During the course of the investigation petitioner supplied police with false, contradictory and irreconcilable accounts of the events surrounding this shooting of April 19, 1998. Moreover, the investigation into the shooting revealed other evidence that contradicted and belied petitioner's various versions of events.

When first interviewed in the Yum Yum Donuts parking lot, petitioner told police that she was abducted approximately a block away from her home in Philadelphia. She stated that she had stopped and gotten out of her car to use the walk-up MAC machine at the Police & Fire Credit Union at Grant Avenue and Academy Road in Philadelphia. She stated that when she got back into the car, there was a man in the back seat who told her to take him to her daughter and then told her to take him to petitioner's father. Petitioner told police that she drove around trying to stall but ultimately decided to pull into the parking lot of the Rosemore Shopping Center located on County Line Road in Warminster Township, Bucks County. She told police that she decided to pull out her own gun and shoot him before he could shoot her. She stated that she pulled the gun from her left waste band with her left hand. The man in the back seat

began to struggle for possession of the gun from the back seat. He took the gun from her and shot her before fleeing her car through the front passenger seat car. Petitioner stated that he then jumped into another car and fled the scene. Petitioner could not explain where this vehicle came from but insisted that she was sure that she had not been followed during the almost two hours she drove around with her abductor. Petitioner told police that she did not see nor have any indication that the man was armed, but only had a "feeling" that he was armed. Petitioner insisted that she never saw the man and could not describe him. She also insisted that she could not provide any description of the vehicle to which the subject fled. Petitioner for the first time implicated the Camacho family and told police that her daughter's father, Carmello Camacho, was in prison and that his family was trying to take her daughter. N.T. Vol. III, pp. 92-99.

Immediately following the shooting, the police processed the crime scene and seized the victim's vehicle, weapon, and clothing as forensic evidence, to identify the perpetrator and establish the crime. Subsequent investigation revealed evidence inconsistent with petitioner's account. The MAC machine at the Police and Fire Credit Union described by petitioner was not a walk-up machine but rather a drive-up machine. The video tape retrieved from the credit union showed that petitioner drove up to use the machine and drove away without any indication of any trouble or any indication that anyone else was in her vehicle. N.T. Vol. IV, pp. 89-91; Exhibit C-21. Inspection of the gun revealed that the cylinder of the revolver had been moved indicating that someone had opened the weapon. N.T. Vol. III, pp. 138-40. Inside of petitioner's coat pocket investigator's found a MAC receipt for the police and fire Credit Union dated April 18, 1998. That receipt indicated that petitioner withdrew $100

at 11:44 p.m. Neatly wrapped around that card were four (4) twenty-dollar bills and five one (1) dollar bills. N.T. Vol. III, pp. 143-44. The remaining fifteen (15) dollars was never found nor accounted for by petitioner.

Petitioner was again interviewed at 5:30 a.m. at Abington Memorial Hospital. N.T. Vol. III, pp. 134-35. At that time, petitioner told police that she had seen her abductor in the rear view mirror. She stated that he wore a ski mask. N.T. Vol. III, p. 137. She told police that she knew he wanted to shoot her with her own gun despite the fact that the man did not know that she had a gun. N.T. Vol. III, p. 138.

Following her release from the hospital, police again interviewed petitioner at the Warminster Township Police Department on May 1, 1998. N.T. Vol. III, pp. 22-23. Petitioner was left alone in a conference room for two (2) hours to write out a hand-written statement relating all the events of the abduction and shooting in detail. N.T. Vol. III, p. 25; Exhibit C-4. In that statement, petitioner related that the events that led to the shooting began on April 15, 1998 when she received a voice mail message from Johanna Camacho, the sister of Carmello Camacho, the father of petitioner's five year old daughter, Maria. Petitioner related that she received a second voice mail message on the date of the shooting, April 18, 1999 from the same Johanna Camacho. Petitioner claimed that she tried to return that call several times and ultimately reached Janet Camacho, Johanna's sister who promptly threatened to take Maria away from petitioner. The Camacho sisters live in Philadelphia next door to each other. N.T. Vol. III, pp. 30-36.

In this written account of May 1st, petitioner related the same account of the incident as to the locations of the abduction and shooting. However, additional critical events

changed from her previous accounts. In this account, petitioner related that she never got out of her car. She related that she drove up to the MAC machine and noticed the abductor as she drove away. She claimed that the abductor pulled a gun and held it to her arm. For the first time, petitioner claimed that the abductor repeatedly threatened to shoot her. Petitioner, who up until that point had told police that she had decided to pull into the shopping center parking lot to end the incident, changed her account and told police that the abductor ordered her to pull into that lot. In this account, petitioner claimed that despite her alleged fear and nervousness, she laughed at and mocked the abductor when he learned that for two hours she had been driving around to stall him. She claimed she laughingly told her abductor "Wow. You finally figured it out." In this account, petitioner claimed that she and the abductor fought for the gun while the abductor was in the front passenger seat, not the back seat as she had previously told police. Finally, petitioner, despite her inability on April 19th to describe the "getaway" car or her assailant, now gave a detailed description of both the assailant and the vehicle. N.T. Vol. IV, p. 96. Petitioner described a 1987-1989 dark blue Chevy Blazer and provided such minute details such a description of the wheel cover and the louvers over the windows. Petitioner claimed that despite her fear and nervousness, she chased this armed gunman and his unknown accomplice out of the parking lot driving 80 m.p.h. N.T. Vol. III, pp. 37-53.

Petitioner was interviewed by police about the contents of this hand-written statement. N.T. Vol. III, p. 270. Petitioner told police that on Thursday, April 16th, she received a voice mail message from Johanna Camacho, that she tried to call back but did not speak to her. She said she was home all night and didn't call again until the

next day, the 17th, in complete contradiction to the testimony of the Camacho sisters. N.T. Vol. III, pp. 271-72. Moreover, the telephone records for the 16th revealed that petitioner initiated the telephone contact with the Camachos and that petitioner did not receive any calls or messages from them. N.T. Vol. III, p. 276. The records also contradicted petitioner's claim that she was home all night and supported the Camachos' account that petitioner visited them at their residence around 7:30 and stayed for approximately forty (40) minutes. Petitioner could not explain the inconsistency. N.T. Vol. III, p. 281. She could not explain why she was trying to contact the Camachos. N.T. Vol. III, p. 282. Petitioner had told police that she had received a voice mail message from the Camachos on Thursday the 16th but did not return that call until Friday morning the 17th. N.T. Vol. IV, pp.92-4. Petitioner's telephone records revealed that no such call was made. Petitioner could not explain this inconsistency. N.T. Vol. IV, p. 100. Petitioner had told police that she used the MAC at Grant and Academy and not the one at work because she needed an account balance. N.T. Vol. III, p. 48, Vol. IV, pp. 94-95. Investigators checked the MAC machine at petitioner's place of employment and learned that that machine also gives an account balance. N.T. Vol. IV, pp. 21-22. Petitioner could not explain the possession by the Camachos of a recent school photograph of her daughter Maria. N.T. Vol. IV, p. 98. She could not explain the disappearance of money from her $100 MAC withdraw. N.T. Vol. IV, pp. 99-100. The telephone records also established that at 1:44 and 1:45 a.m. petitioner checked her voice mail. This occurred before she received Sgt. Ginaldi's call which, according to petitioner's account of events, would have been during the course of the abduction. Petitioner had initially told police that she never touched the cellular telephone in her car.

Petitioner could not explain why the telephone records reflected that she checked her voice mail twice during the abduction. N.T. Vol. IV, pp. 103-04. At the conclusion of this interview, police informed petitioner that they did not believe she was telling them the truth and that they wanted to hear the truth. N.T. Vol. IV, p. 128.

The day after this interview, May 2nd, petitioner called the Warminster Police Department and left a voice mail message wherein she apologized to Detective Mosiniak for the previous night and stated that she wanted to make things right and that she realized the detectives were only trying to help her. N.T. Vol. IV, pp. 105-07; Exhibit C-22. On May 4th, petitioner again called the police department. She told one of the investigating detectives that she was sorry about the May 1st interview. She stated that she wanted to make things right and asked to talk to the investigators again. N.T. Vol. IV, p. 108.

On May 6, 1998, petitioner again came to the Warminster Township Police Department and voluntarily gave a second hand-written statement recounting the alleged events of April 18th and 19th. N.T. Vol. IV, p. 109; Exhibit C-23. In that statement, petitioner completely changed her account of where and how the alleged abduction began, the number of individuals and vehicles involved, and how she was shot. In this new account, petitioner changed her account of her contact with the Camacho family in an attempt to conform her story to the telephone records. She now stated that she called the Camachos on Thursday night from her cell phone. She claimed that her call to them on Friday was from a telephone booth and not her cell phone. As to the alleged abduction, petitioner wrote that she went to the MAC machine, checked her voice mail and retrieved a message from Janet Camacho telling her to meet her "now" at a

parking lot at the Neshaminy Mall in Bensalem Township, Bucks County. Petitioner's telephone records revealed that petitioner did not in fact check her voice mail at that time. Petitioner related that she drove to that parking lot. While there, a black Pathfinder pulled up beside her and an unmasked Hispanic male got into the passenger seat of her car. He ordered her to drive telling her that they were going to meet Janet and Johanna. Petitioner related that the Pathfinder disappeared and that she drove around, at one point stopping at the Wal-Mart parking lot in Warminster Township. She related that this Hispanic male told her to pull into the parking lot at Rosemore Shopping Center and that he appeared to be frustrated. In an apparent attempt to explain why her telephone records would show that she checked her voice during the abduction, petitioner claimed that she then suggested to her abductor that she check her voice mail to see if Janet or Johanna had called. She further related that after she checked her voice mail, a second man, wearing a mask and gloves got into the passenger seat of her car. She claimed that the first unmasked man then got into the back seat of her car and held a gun to her arm. The masked man told her to drive. She refused and pulled out her gun. She then claimed that the gun was taken from her by the masked man in the passenger seat who stated "this one's from us," and shot her. She claimed both men then fled the vehicle into an awaiting blue Blazer. N.T. Vol. IV, pp. 133-42. Once again, police told petitioner that they had problems with her account. Petitioner responded to police that "that's my story. . . ." N.T. Vol. IV, p. 145.

Testimony at trial revealed that petitioner told her sister and her sister's boyfriend, a Philadelphia police officer, her first version of events, that she was abducted out of Philadelphia, but never told them this different and revised version of events. N.T. Vol. IV, pp. 187-88, 199.

Other evidence introduced at trial also established that petitioner's accounts were fabricated. Investigators inspected petitioner's vehicle and observed that a number of items that were on the front passenger seat floor were still neatly folded and undisturbed despite petitioner's claim that a her reported abductor occupied that seat during the struggle for the gun. N.T. Vol. III, pp. 164-5; Exhibit C-9. Despite the two-hour drive described by petitioner, an inspection of the gas tank revealed almost a full tank of gas. N.T. Vol. III, pp. 167; Exhibit C-10. Despite petitioner's claim that her abductor struggled with her from both the back seat and the front seat, the layer of dust along the interior of the car was undisturbed. N.T. Vol. III, pp. 168-69; Exhibit C-12. N.T. Vol. III, pp. 170-71. The vehicle was examined for fingerprints. N.T. Vol. III, p. 171. No fingerprints of a third person were found, only those of petitioner and Sgt. Ginaldi. N.T. Vol. III, pp. 185-86.

A blue Blazer identical to the description given by petitioner was located by Philadelphia police detectives and belonged to the Camacho family. It was located parked in front of their residence on Ella Street in Philadelphia. Petitioner identified the Camacho's vehicle as the vehicle that was used to assist the abductor to flee from the shooting. N.T. Vol. III, pp. 188-89, 192; Vol. IV p. 96. Both Janet and Johanna Camacho cooperated with police in this investigation. They told the police that the Blazer was inoperable and had not been moved for eight months. Based on this information, the Detectives examined the car and observed debris in and around the vehicle confirming the information given by the Camachos. Police also attempted to start the car but were not able to do so. N.T. Vol. III, pp. 190-91. After obtaining a search warrant,

police seized and later examined the Blazer. That examination revealed that the Blazer had not been operated for an extended period of time. That conclusion was reached based on the amount and location of debris in the engine and on the tires and rust on the motor parts. N.T. Vol. III, 188-89, 204-13; Exhibit C-15. The Camacho sisters also provided police with a photograph of Maria that they claimed petitioner had given to them the week of the shooting. N.T. Vol. III, pp. 201-02.

Both Janet and Johanna Camacho testified at trial. Janet works for an insurance company in King of Prussia. N.T. Vol. III, p. 219. Johanna works as a nurse at Albert Einstein Medical Center. N.T. Vol. III, p. 250. Both women testified that petitioner, whom they had not seen for years, suddenly contacted them and asked to visit. Petitioner appeared at their residence on Thursday April 16th. N.T. Vol. III, pp. 229, 251-2. Petitioner stayed for a short visit and left. Before leaving petitioner gave the sisters a picture of Maria. She also observed and commented on the Blue Blazer parked in front of the residence. N.T. Vol. III, pp. 239-41, 243, 254, 256-57. That visit was witnessed by Janet and Johanna Camacho's aunt. N.T. Vol. IV, pp. 87-88.

Petitioner's motive for this obviously self-inflicted gunshot wound became clear during the testimony of Marie Bachmayer. Ms. Bachmayer, a police dispatcher, testified that she had an ongoing romantic relationship with petitioner's boyfriend, Sgt. Anthony Ginaldi, for two (2) years prior to the shooting. N.T. Vol. IV, p. 37. She testified that on Tuesday, April 14th, five (5) days before the shooting and two (2) days before petitioner's unexpected appearance at the Camacho residence, she gave Ginaldi an ultimatum.

She told him she could no longer tolerate Ginaldi's relationship with petitioner. Ginaldi told Bachmayer that he would tell petitioner he wanted to move on to a new relationship. N.T. Vol. IV, pp. 38-39. On April 15th, petitioner called Bachmayer's residence from her cell phone. That call lasted eleven minutes. N.T. Vol. IV, pp. 76-79; Exhibit C-19. Moreover, on both Friday night, April 17th, and Saturday night, April 18th, petitioner made false reports of a prowler at her residence in an apparent attempt to gain Ginaldi's attention. N.T. Vol. III, pp. 36-38, 78-82.

REASONS FOR DENYING THE WRIT

THE TRIAL COURT PROPERLY REFUSED TO SUPPRESS THE PHYSICAL EVIDENCE TAKEN FROM PETITIONER'S PERSON AND VEHICLE AS PETITIONER, A SELF-REPORTED "VICTIM" OF A VIOLENT CRIME, HAD NO REASONABLE EXPECTATION OF PRIVACY, THE EVIDENCE WAS IN PLAIN VIEW, THE EVIDENCE WAS SEIZED PURSUANT TO PETITIONER'S CONSENT, AND/OR THE EVIDENCE WAS SEIZED PURSUANT TO A VALID INVENTORY SEARCH.

The Trial Court properly ruled that all of the physical evidence was properly seized by police without a warrant. Petitioner had no reasonable expectation of privacy in the evidence, the evidence was in plain view, the evidence was seized by consent, and/or the evidence was seized pursuant to a valid inventory search.

For purposes of the Fourth Amendment, a "search" is an examination of an individual's house, buildings or person for the purpose of discovering contraband or

some evidence of guilt to be used in the prosecution of a criminal action. Such an examination must compromise an individual's legitimate privacy interest before it constitutes a search. *Horton v. California*, 496 U.S. 128, 133, 110 S. Ct. 2301, 2306, 110 L. Ed. 2d 112 (1990). Both the Pennsylvania and United States Constitutions do not prohibit warrantless searches but rather protect individuals from "unreasonable searches and seizures." *Illinois v. Rodriguez*, 497 U.S. 177, 183-184, 110 S. Ct. 2793, 2799, 111 L. Ed. 2d 148 (1990); *United States v. Hensley*, 469 U.S. 221, 226, 105 S. Ct. 675, 679, 83 L. Ed. 2d 604 (1985). Individuals are protected from "unreasonable" governmental intrusions into their legitimate expectations of privacy. To prevail, petitioner is required to first show that a subjective expectation of privacy exists to the area being searched. An expectation of privacy exists where a defendant by his conduct "exhibits an actual (subjective) expectation of privacy" and that the subjective expectation "is one that society is prepared to recognize as reasonable. *Minnesota v. Olson*, 495 U.S. 89, 95-96, 110 S. Ct. 1684, 1687, 109 L. Ed. 2d 85 (1990). The determination of whether an individual's subjective expectation of privacy will be recognized as legitimate depends upon the totality of the circumstances and ultimately rests upon a balancing of the societal interests involved. In order to have a reasonable expectation of privacy, one must intend to exclude another and must exhibit that intent. *Rakas v. Illinois*, 439 U.S. 128, 143-144, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978).

Consent also vitiates the need for a warrant. It is well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041, 2043-2044, 36 L. Ed. 2d 854 (1973).

The law also recognizes the concept of implied consent. In *Thompson v. Louisiana*, 469 U.S. 18, 105 S. Ct. 409, 83 L. Ed. 2d 246 (1984), this Honorable Court stated that the police may make warrantless entries on premises where they reasonably believe that a person within is in need of immediate aid, and that they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. *Id.*, at 21, 105 S. Ct. at 411. In, *Commonwealth v. Witman*, 750 A.2d 327 (Pa. Super. 2000), the Superior Court of Pennsylvania held that an exception to the warrant requirement exists where the defendant has summoned the police for help and thus set the tone for the initial investigation. *Id.* at 334-335.

Moreover, police may seize evidence without a warrant which is in plain view. Evidence may be seized which is in plain view if (1) the initial intrusion is lawful, (2) the evidence is inadvertently observed, and (3) there is probable cause to link the evidence to a criminal act. Probable cause exists if a reasonable man would believe that the item might be useful as evidence of a crime. *Minnesota v. Dickerson*, 508 U.S. 366, 374-375, 113 S. Ct. 2130, 2136-2137, 124 L. Ed. 2d 334 (1993).

Petitioner baldly claims that in the instant case, she was the target and focus of the police investigation, and that, therefore, the police were required to get a search warrant before securing any evidence of the reported crime. Petitioner's claim disregards the facts of this case.

In the instant case, petitioner reported to law enforcement authorities she was the victim of an abduction and shooting. The police responded appropriately in investigating and attempting to apprehend the reported suspects as reported by petitioner.

On April 19, 1998, shortly after 2:00 a.m., the Warminster Township Police, Bucks County, Pennsylvania responded to assist the call of a shooting victim in the parking lot of a donut store and found petitioner seated inside of her vehicle, a two-door Bronco, with a gunshot wound to her right thigh. Also present on the scene was petitioner's live-in paramour, a Philadelphia police officer who was armed and in uniform. Petitioner reported to the police immediately upon their arrival, while she sat in her vehicle being treated by an EMT, that she had been the victim of a crime — specifically that she had been abducted and shot while inside her vehicle. In response to her report of having been abducted and shot, as well as her condition upon police arrival, both the Warminster and Philadelphia Police Departments began investigations to apprehend the reported shooter. On scene, the police immediately broadcast the information over police radio to the surrounding counties in an attempt to apprehend the individuals reportedly involved. Moreover, the police took steps to protect petitioner's father and daughter. Police also began to secure evidence of the violent crime which petitioner reported.

While on scene, petitioner's gun was seized from the front passenger seat of her vehicle in plain view at the scene. N T. 1/8/99, In fact, petitioner's Bronco was the "crime scene." It was immediately secured and later removed and searched. N.T. 1/8/99, pp. 87-90. The police took custody of petitioner's clothing that was cut off of her in the ambulance. N.T. 1/8/99, 44-45. They took custody of her jacket at the hospital. All of this was done in petitioner's presence without objection. N.T. 1/8/99, pp. 24, 44-45. At the hospital, petitioner was told that her car, the contents of the car and her personal property on her person had been

seized as evidence and would be returned at a later date. Petitioner agreed with police department's handling of her property. N.T. 1/8/99, p. 110.

Petitioner's clothing which contained a bullet hole and blood splatters was also evidence properly seized in plain view. The jacket was properly inventoried. Once the change purse in the pocket of petitioner's jacket was opened to inventory its contents, the MAC receipt and money was clearly evidence of the crime reported by petitioner who claimed the abduction started after she withdrew $100 from the MAC machine.

Contrary to the above, petitioner bases her conclusions and her entire argument — that petitioner was the target and focus of the investigation — solely on the testimony of Sgt. Anthony Ginaldi. Ginaldi was petitioner's live-in paramour, who testified, in what petitioner's characterizes as an "abusive interrogation," that the first officer on the scene was screaming at petitioner and calling her a liar. Petitioner ignores the fact that the testimony of Ginaldi was specifically rejected by the Suppression Court. The Court found that the officer did not scream at petitioner nor did he call her a liar while on scene. In fact, the finding of the Trial Court was that the officer's focus at the scene was to acquire as much information as quickly as possible from petitioner who appeared to be a victim of a shooting and abduction where it appeared that the perpetrator was still at large. Vol. II p. 146

Additionally, based upon the information supplied by petitioner, it became immediately apparent to police that the cellular telephone records would be important evidence in the claimed abduction and shooting. Petitioner had told police

that the cellular telephone had been used to receive threatening calls during the week prior to the incident and been used during the alleged abduction itself. Sgt. Ginaldi was the subscriber and agreed to provide those telephone records. N.T. 1/8/99 pp. 111-14. Later Sgt. Ginaldi informed police that he was having difficulty getting the records and agreed to having the detective obtain the records. Those records were ultimately obtained through federal sources who had opened a federal case as a result of the kidnapping/abduction report. N.T. 1/8/99, pp. 115-17. Police later obtained the same records in response to a written consent form executed by Sgt. Ginaldi which covered not only the week of the incident, which were obtained by the federal authorities, but several months prior to the incident. N.T. 1/8/99 pp. 119-25; CS-1, CS-2.

The Trial Court properly refused to suppress these telephone records. Warrantless searches may be made with the consent of a third party with common authority over property. Where there is joint access or control, there is no legitimate expectation of privacy. *Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S. Ct. 2793, 2797, 111 L. Ed. 2d 148 (1990). Since the police had obtained the voluntary consent of Sgt. Ginaldi, the telephone subscriber, on two separate occasions, no warrant was required for the police to obtain those telephone records. Moreover, evidence which is initially illegally obtained but later legally obtained will not be suppressed. *United States v. Herrold*, 962 F.2d 1131 (1992).

Philadelphia Detective Bridgett Durso retrieved the MAC machine videotape with the consent of the Police and Fire Credit Union. N.T. 118-19. Petitioner had no reasonable expectation of privacy in the videotape of the Police and Fire Credit Union.

Despite all of the above, petitioner continues to maintain that the seizure of the physical evidence by the police in this case was illegal. Petitioner mistakenly relies on the case of *Flippo v. West Virginia*, 120 S. Ct. 7 (1999) wherein this Honorable Court, in a Per Curiam Opinion, reversed the trial court, ruling that the search of the homicide scene was impermissible on the sole ground that the residence was a "homicide crime scene." This Honorable Court specifically noted that the trial court did not rule on the inventory, plain view, or consent exceptions to the warrant requirement, but relied solely on the "crime scene exception." In reversing the trial court, this Honorable Court reiterated the holding of *Mincey v. Arizona*, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978), which stated that there is no "crime scene" exception to the warrant requirement. This Honorable Court specifically noted that it was not deciding whether the search in that case might be justified as consensual or justified under another of the established exceptions to the warrant rule or if it constituted harmless error. This Honorable Court therefore remanded the case for the state court to resolve these issues.

In contrast to *Flippo* and *Mincey*, the record in this case establishes the seizure of the items in question was pursuant to consent, plain view, inventory search, and/or petitioner's lack of reasonable expectation of privacy due to her self-reported position as a "victim" of a crime, all permissible under established Fourth Amendment standards.

The Fourth Amendment protects individuals against unreasonable searches and seizures. Petitioner approached the police and asked them to investigate a violent crime which she claimed had been committed against her. She reported that an armed gunman had discharged a gun in a public

parking lot and that that same gunman and his accomplices were at large and intent on kidnapping her child. Such conduct is tantamount to consent. *See Commonwealth v. Witman, supra*. Petitioner could have no actual (subjective) expectation of privacy given her implication of others in serious felonious conduct. Such an expectation of privacy cannot be considered as one that society is prepared to recognize as reasonable under circumstance where an individual characterizes themselves as a "victim", requests police assistance and thereby initiates a massive investigation under emergency circumstances. Moreover, petitioner specifically consented to the seizure of her property.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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